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Eligibility of Reprinted Books for the Tax Credit for Book Publishing and Other Fiscal Measures

This information bulletin provides a detailed description of the changes made to certain fiscal measures. The changes, most technical in nature, are designed to improve the coherence and integrity of the tax system.

They stipulate, among other things, the eligibility of reprinted books for the refundable tax credit for book publishing, a one-year extension of the time allowed to reach the minimum threshold of 150 jobs for the purposes of the refundable tax credit regarding major employment-generating projects, the recognition of an eligible public research centre for the purposes of the refundable tax credit of 35% for scientific research and experimental development, and the streamlining of buyback rules for securities issued under the former cooperative investment plan.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691-2236.

The French and English versions of this bulletin are available on the ministère des Finances website at: www.finances.gouv.qc.ca

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Finances Québec

Eligibility of Reprinted Books for the Tax Credit for Book Publishing and Other Fiscal Measures

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1. ELIGIBILITY OF REPRINTED BOOKS FOR THE REFUNDABLE TAX CREDIT FOR BOOK PUBLISHING

The refundable tax credit for book publishing was implemented to further support book publishing activities and thus enable Québec publishers to develop foreign markets for Québec works, carry out large-scale publishing projects and develop the translation market.

The tax credit is equal to the total of the following amounts:

— an amount equal to 35% of the eligible labour expenditure attributable to preparation costs regarding an eligible book or eligible group of books;

— an amount equal to 27% of the eligible labour expenditure attributable to printing costs regarding an eligible book or eligible group of books.

However, eligible labour expenditures are limited to 50% of the preparation costs directly attributable to the preparation of the book or group of books and to 33 ⅓% of the printing costs directly attributable to the printing of the book or group of books, as the case may be. The tax assistance granted can therefore reach 17.5% of such preparation costs and 9% of such printing costs.

Moreover, regarding an eligible book or group of eligible books, the tax credit cannot exceed $437 500 for the eligible book or for each book that is part of the eligible group of books.

To be eligible, a book must, among other things, be published under the trademark of a corporation recognized by the Société de développement des entreprises culturelles (SODEC) as a publishing house and be the work of a Québec author.

In addition, at least 75% of the amounts relating to the preparation and printing of a book of group of books, as the case may be, apart from non-repayable advances paid to Québec authors, must be paid either to persons who resided in Québec at the end of the calendar year preceding the one during which the publishing work started, or to corporations that had an establishment in Québec during such preceding calendar year.

Accordingly, for the purposes of this tax credit, the book must not be included on the list of excluded books, among which are reprinted books.

Briefly, the eligible labour expenditure attributable to the printing costs of an eligible book or eligible group of books covers only the wages or salaries, or other remuneration, relating to services provided in Québec for eligible printing work relating to such book or group of books before the date at which the initial printing or the eligible book or of the last book included in the eligible group of books is completed, that were paid at the time of filing the claim for the tax credit.

Moreover, the eligible printing work relating to an eligible book or eligible group of books means the work done to carry out the printing stages relating to such book or group of books that includes the initial printing of the eligible book or of the books included in the eligible group of books, the initial binding and initial assembly.

Similarly, the printing costs directly attributable to the printing of an eligible book or eligible group of books consist in particular of printing costs incurred for the initial printing of the eligible book or books included in the eligible group of books, the initial binding and initial assembly, that were paid at the time of filing the claim for the tax credit.

In the case of the printing of a book, the determination of the number of copies printed in an initial print run is a major preoccupation for publishers, who are not in a position to know the sales volume of a book or the volume required in the field of educational publishing. Consequently, publishers often prefer to limit the number of copies initially printed and, if need be, carry out a second printing for which neither the preparation costs nor the printing costs are included in the calculation of the tax credit for book publishing, despite the risk that reprinting can also carry.

Moreover, such costs, where incurred for a republished eligible book, are taken into consideration for the purposes of the tax credit. The distinctions between a book published for the first time and the "same" book that is republished can be minimal. For example, a book for which only the title is changed can qualify as a republished book.

Lastly, eligible books are often reprinted outside Québec because of cost advantages.

❑ Eligibility of reprinted books

To reflect the difficulties relating to the assessment of the number of copies to print in the initial print run of a book as well as the risk that reprinting a book can carry, and to maintain printing sector jobs in Québec, the tax credit for book publishing will be changed to withdraw reprinted books from the excluded books category.[1]

Accordingly, henceforth, the eligible labour expenditure attributable to printing costs, the eligible printing work relating to an eligible book or eligible group of books and the printing costs directly attributable to the printing of an eligible book or eligible group of books will also include the labour expenditure, work and costs relating to a reprinting.

1 The terms and conditions of this change will be found, as the case may be, in the tax legislation or in the parent legislation consolidating the non-tax parameters of certain fiscal measures and whose introduction was announced in *Information Bulletin 2007-10*, on page 16.

However, only the eligible labour expenditure attributable to the reprinting costs of an eligible book or a book that is part of an eligible group of books and the printing costs directly attributable to such reprinting, incurred no later than 36 months after the date on which the initial printing of the eligible book or of the book included in the eligible group of books is completed will be taken into consideration for the purposes of the tax credit for book publishing.

Accordingly, the eligible labour expenditure attributable to preparation costs, if any, will not be taken into consideration in the calculation of the tax credit for book publishing attributable to reprinting.

Lastly, in the case of an eligible book or a book that is part of an eligible group of books that has been reprinted, the 33 ⅓% cap on printing costs directly attributable to the printing of the book or group of books, as well as the cap of $437 500 on the tax credit for book publishing, will be calculated taking into account in particular the labour expenditures and the costs relating to printing and to reprinting.

❑ Role of SODEC

Like the current situation, the favourable advance ruling and the certificate issued by SODEC regarding a book or group of books will be issued without taking a reprinting into account. Accordingly, SODEC's role as to the assessment of the eligibility criteria of a book or group of books will not change.

Among other things, the advance ruling and the certificate will continue to certify that at least 75% of the amounts paid for the preparation and for the printing of a book or a group of books, as the case may be, are paid to persons who reside in Québec or to corporations that have an establishment here, on the basis of the preparation costs and the initial printing costs only.

Consequently, only an eligible labour expenditure attributable to reprinting costs of a book for which a certificate has previously been issued, regardless of such reprinting, according to which it is an eligible book or a book that is part of an eligible group of books, may give rise to a tax credit for book publishing, without having to obtain a new certificate from SODEC.

❑ Application date

These changes will apply to an eligible book, or to a book included in an eligible group of books, regarding which the reprinting work has not started prior to the date of publication of this information bulletin.

2. EXTENSION OF THE TIME FOR CREATING JOBS REGARDING THE REFUNDABLE TAX CREDIT FOR MAJOR EMPLOYMENT-GENERATING PROJECTS

In the April 21, 2005 Budget Speech,[2] a temporary refundable tax credit was introduced regarding major employment-generating projects in the information technology sector to consolidate the development of this sector in Québec as a whole while encouraging businesses to start up and expand.

Briefly, this tax credit, whose rate is 25%, is granted to an eligible corporation regarding the eligible wages paid to eligible employees working in the course of carrying out an eligible contract entered into before January 1, 2008. An eligible corporation can benefit from this tax credit regarding eligible salaries incurred, in relation to such contract, until December 31, 2016. To be entitled to this tax credit, such a corporation must have applied, no later than March 31, 2008, for an eligibility certificate with Investissement Québec confirming, first, that it operates in the information technology sector and, second, that it is reasonable to consider that the completion of the eligible contract will lead to the creation of a minimum of 150 jobs within 24 months.

The starting point for computing this 24-month period is the date activities relating to the eligible contract begin to be carried out, unless the contract is covered by a certificate issued after December 19, 2007, in which case the starting point is the December 31, 2008 or the date activities relating to the contract begin to be carried out, whichever occurs first.

The decline in demand for services in the information technology sector and the general economic slowdown have made it more difficult to create jobs. Some corporations have even been forced to reduce their activities, if not proceed with layoffs. In such a context, the 24-month period available to an eligible corporation to create a minimum of 150 jobs appears less realistic, threatening not only to jeopardize achievement of this minimum job creation objective, but also calling into question the survival of the jobs created in the expectation of receiving this tax credit.

To enable corporations that have obtained the required eligibility certificate from Investissement Québec to reach the minimum threshold of 150 jobs within a time period enabling them to be entitled to the tax credit, and to safeguard the jobs already created with the aim of reaching this objective, the stipulated time for this purpose will be raised to 36 months,[3] it being understood that the starting point for computing this time period remains the same.

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2 MINISTÈRE DES FINANCES DU QUÉBEC, *2005-2006 Budget – Additional Information on the Budgetary Measures*, April 21, 2005, Section 1, p. 96.

3 This change will be found in the framework legislation consolidating the non-tax parameters of certain fiscal measures and whose introduction was announced in *Information Bulletin 2007-10*, on page 16.

This change will apply to an eligible contract, provided the 24-month time period otherwise applicable to such contract is not expired on January 1, 2009.

3. RECOGNITION OF AN ELIGIBLE PUBLIC RESEARCH CENTRE

A taxpayer who carries on a business in Canada can obtain a refundable tax credit for scientific research and experimental development (R&D) of 35% in relation to R&D activities, where such activities are carried out on his behalf, in Québec, by an eligible public research centre in the course of an eligible research contract that the taxpayer enters into with such a centre.

In this regard, it is the responsibility of the ministère des Finances to recognize a research centre as an eligible public research centre.

More specifically, to be recognized as an eligible public research centre for the purposes of this refundable tax credit for R&D, a research centre must demonstrate its capacity, in terms of human, physical and financial resources, to carry out R&D work on behalf of businesses. Accordingly, the employees must have the qualifications needed to carry out the R&D work subcontracted to the research centre, and the research centre must have premises and equipment that enable it to carry out such work in its field of expertise.

In addition, the research centre must obtain most of its financing from public funds.

Moreover, all research centres that the ministère des Finances has recognized as eligible public research centres must annually confirm with the ministère des Finances that they satisfy the eligibility criteria listed above. This annual return relates to a calendar year and must be filed no later than the last day of February following such calendar year.

Lastly, an eligible public research centre must advise the ministère des Finances as soon as a change occurs, regarding human, physical or financial resources, that could compromise its capacity to carry out R&D work on behalf of businesses or to satisfy the requirement relating to the source of its funding.

In this context, a new eligible public research centre will be recognized, namely the Centre interdisciplinaire de développement en cartographie des océans (CIDCO). This recognition will apply regarding R&D carried out after December 31, 2008, under an eligible research contract concluded after that date.

For greater clarity, only eligible R&D work according to the Taxation Act carried out on a subcontracting basis by CIDCO, in Québec, in the course of an eligible research contract for which a favourable advance ruling has been rendered according to the procedure established under that Act, will enable a taxpayer who carries on a business in Canada to receive this refundable tax credit for R&D.

4. INCREASE IN THE INCOME TAX RATE APPLICABLE TO DEPOSIT INSURANCE COMPANIES

Deposit insurance companies are currently subject to an income tax rate of 5.75%.

This income tax rate has not been adjusted in recent years, despite the various changes made to corporate income tax rates.

In this context, this income tax rate applicable to deposit insurance companies will be increased to correspond to the general income tax rate that currently applies to corporations, i.e. 11.9%.

This increase in the income tax rate applicable to deposit insurance companies will apply as of the date of publication of this information bulletin.

Should the taxation year of a deposit insurance company include that date, the income tax rate effectively applicable for such taxation year will be a weighted income tax rate, reflecting the number of days of the taxation year included in each of the two periods, i.e. the period prior to such date and the one beginning on such date.

In addition, in such a case, the instalment payments of the insurance company will have to be adjusted, according to the usual rules, as of the first instalment following such date, to reflect the effects of this increase.

5. EXCLUSION OF FLOW-THROUGH SHARES FOR THE PURPOSES OF THE STOCK SAVINGS PLAN II

The stock savings plan II (SSP II) is a plan to assist the capitalization of corporations that, in general, allows an individual to deduct, in calculating his taxable income, the adjusted cost of eligible shares acquired during the year as part of a public offering of shares carried out under the plan by an eligible issuing corporation. The SSP II can be considered a general tax assistance plan in contrast to a targeted tax assistance plan for a given sector, for instance the natural resources sector.

The flow-through share system is a targeted tax assistance plan for mining, oil and gas companies. Briefly, this system enables a corporation to forego, for tax purposes, its exploration expenses for the benefit of its shareholders, thus resulting in a "fiscal transfer" of the corporation's expenses to its shareholders. While such a plan exists at both the provincial level and the federal level, each of them is independent and applies separately one from the other.

The tax credit relating to resources (TCRR) is an alternative to Québec's flow-through share system. Briefly, this tax credit enables an eligible corporation to obtain a refundable tax credit of up to 38.75% of the amount of its exploration expenses. Essentially, the expenditures eligible for this tax credit are the Quebec's eligible expenditures the corporation can forego in favour of its shareholders under Québec's flow-through share system. Consequently, regarding those expenses, these two measures are mutually exclusive.

Since the SSP II and Québec's flow-through share system are both tax assistance plans based on the fact of a public offering of shares by a corporation, it might have been possible for a share to be eligible for both the SSP II and Québec's flow-through share system. Accordingly, to prevent an inappropriate aggregation of Québec tax assistance, the tax legislation stipulates that a share issued under the SSP II is excluded from Québec's flow-through share system.

However, such an exclusion of a share issued under the SSP II does not exist for the purposes of the federal flow-through share system. It would therefore be possible for a corporation to carry out a public share offering that would be eligible for both the SSP II and the federal flow-through share system.

Moreover, as mentioned above, at a technical level, the TCRR and Québec's flow-through share system are mutually exclusive. However, regarding the interrelation between the SSP II and the TCRR, like the situation that obtains in relation to most Québec tax credits, it is possible to obtain both the benefit of the SSP II for shareholders and that of the TCRR for the issuing corporation. Accordingly, considering that the federal legislation is separate from Québec's legislation, it would be technically possible for a corporation to benefit from the TCRR while enabling its shareholders to benefit from both the federal flow-through share system and the SSP II at the provincial level.

Such a multiplicity of tax assistance is not desirable from a fiscal policy standpoint. Consequently, to prevent inappropriate aggregation of tax assistance, an adjustment will be made to the concept of eligible share for the purposes of the SSP II.

More specifically, the rules relating to the SSP II will be changed to stipulate that a share eligible for the SSP II does not include a flow-through share for the purposes of either the Québec or the federal flow-through share system.

This change will apply regarding a public offering of shares for which the receipt of the final prospectus, or the filing exemption, as the case may be, is granted after the day of publication of this information bulletin.

6. STREAMLINING OF THE RULES FOR REDEMPTION OF SECURITIES UNDER THE FORMER COOPERATIVE INVESTMENT PLAN AND ADJUSTMENTS TO VARIOUS TERMS AND CONDITIONS OF THE NEW PLAN

For more than twenty years, the government has supported the capitalization efforts of certain categories of cooperatives[4] by allowing them, through the cooperative investment plan (CIP), to issue securities that come with a tax benefit.

For a long time, the CIP targeted especially work cooperatives and producers cooperatives. The plan has enabled them not only to access capital more easily, but also to increase their permanent capital – redemption of securities eligible for the plan being in particular subordinated to an increase in the reserve of at least 50% of the amount redeemed, and failure to comply with this condition being subject to a penalty.

These days, the CIP also targets certain solidarity cooperatives and its rules are very different from what they were when it was created.

To direct capitalization assistance to cooperatives that genuinely need it and with a substantial presence in Québec, a major overhaul of this plan was announced in the March 30, 2004 Budget Speech.

This overhaul, which led to the formation of a "new CIP", led to significant changes regarding the eligibility of cooperatives. Accordingly, besides belonging to a recognized category, cooperatives must now satisfy criteria on, among other things, the territoriality of their activities, the location of their assets and, for some, their capitalization rate.

To ensure a degree of permanence of the capital raised under the new CIP, securities issued to constitute such capital are required, as a condition of their redemption, to be held for five years. Where the minimum holding period is not satisfied, a special tax or a penalty is generally levied.

All cooperatives wishing to issue securities giving rise to a tax benefit must, since January 1, 2005, comply with the rules of the new CIP and obtain an eligibility certificate for the plan authorizing them to issue such securities. Those that had already issued securities under the CIP before the overhaul of the plan[5] ("former CIP") must continue to manage, regarding such securities, the redemption conditions applicable under the rules of the former plan.

To better reflect the business reality of cooperatives, various changes will be made to the former CIP and the new CIP.

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4 In the interests of readability, references to a cooperative also include a federation of cooperatives.

5 Securities could be issued under these rules until December 31, 2004.

As far as the former CIP is concerned, these changes will affect the redemption conditions of securities issued under this plan and the penalty applicable in the event of non-compliance with the redemption conditions.

The changes to the new CIP affect the eligibility conditions of the plan, so that a new type of solidarity cooperative can have access to it and ease access to the plan for solidarity cooperatives that can be likened to work cooperatives.

They will also affect the integrity rules of the new CIP by restructuring the regime of sanctions that apply to early redemption and repayment and by stipulating new cases of automatic revocation of eligibility certificates.

6.1 Streamlining of redemption conditions for securities issued under the rules of the former CIP and transformation of the penalty for unauthorized redemption into special taxes

Although, since January 1, 2005, it is no longer possible to issue securities under the former CIP, the securities issued before then under these rules continue to be subject to that plan's requirements with respect to their redemption.

According to these requirements, a security issued by a cooperative can be redeemed only as of the year following the two years that follow the year it was issued, and only on the condition that the amount of the reserve appearing in the cooperative's financial statements[6] at the end of the last fiscal period prior to the redemption increased by at least 50% of the amount of the redemption, taking prior redemptions into account, compared to the amount of the reserve shown in the cooperative's financial statements at the end of the last fiscal period preceding the issue.

However, in some cases, these requirements do not apply. A security may be redeemed, at any time and with no restriction, by reason of death, disability[7] or placing under tutorship or under curatorship.

In addition, in other cases, the condition relating to the increase in the reserve is suspended or lifted as a matter of right. Such is the case for redemptions of securities in the event of reaching age 65 (or age 60 when retirement is taken), resignation as a member of the cooperative or exclusion from it.

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6 References to the amount of the reserve shown in the financial statements include, if need be, the amount of the enhancement reserve.

7 For the purposes of the former CIP, a person is considered disabled if he is physically or psychically unable to earn a wage or salary.

This condition can also be lifted by means of an exemption granted by the Minister of Economic Development, Innovation and Export Trade, where securities are redeemed by reason of liquidation or block redemption of all the outstanding former CIP securities of a cooperative facing grave financial difficulties.[8]

In the event that a cooperative redeems a security issued under the rules of the former CIP without complying with the requirements of the plan, it would incur a penalty equal to 50% of the amount of the security thus redeemed.

Despite the fact that the condition relating to the increase in the reserve can, in some cases, be lifted or suspended, it has become apparent that it causes difficulties for cooperatives, especially those operating in fields where the economic situation is unfavourable, such as the forestry sector. This condition can impede the implementation of methods of restructuring the social capital of cooperatives that are often needed to turn their financial situation around.

It has also become apparent that the management of redemption conditions that differ depending on whether the security was issued under the rules of the former CIP or those of the new CIP generates complexity for cooperatives.

In these circumstances, changes will be made to the redemption conditions of securities issued under the rules of the former CIP and the 50% penalty for unauthorized redemption of such security will be replaced by special taxes, similar to what is or will be applicable[9] regarding redemption of securities issued under the rules of the new CIP.

❑ Authorization to redeem securities issued at least five years previously

To facilitate the restructuring of the social capital of cooperatives and simplify the management of redemption transactions of securities issued under the CIP, the requirements for the redemption of securities issued under the rules of the former CIP will be changed to also stipulate that such a security may be redeemed at the expiration of a period of five years starting on the date it was issued, with no obligation to increase the reserve.

Accordingly, like securities issued under the new CIP, the securities issued under the rules of the former CIP may be redeemed on the sole condition that at least five years have elapsed since they were issued.

This measure will apply regarding a security redeemed after the date of publication of this information bulletin.

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8 In general, an exemption can be granted to a cooperative faced with grave financial difficulties only if its assets shown in its last annual financial statements approved by its board of directors are at least 75% lower than what they were at the end of either of the two preceding fiscal periods.

9 A reorganization of the regime of sanctions applicable following early redemption or repayment of a security issued under the rules of the new CIP is announced in subsection 6.3 of this information bulletin.

❑ Transformation of the penalty for unauthorized redemption into special taxes

To reflect the fact that the securities of the former CIP, like those of the new CIP, will be redeemable five years after they were issued and to afford similar treatment to early redemptions under the two plans, the 50% penalty applicable where a security issued under the rules of the former CIP is redeemed in breach of the requirements of this plan will be withdrawn, regarding redemptions made after the date of publication of this information bulletin, and will be replaced with special taxes.

■ Special tax applicable to a cooperative

A cooperative will have to pay a special tax for 2009 where it carries out, during the year and after the date of publication of this information bulletin, a block redemption of securities issued at least five years previously under the rules of the former CIP, unless such redemption:

— either complies with the requirements of the former CIP concerning the increase in the reserve;

— is covered by an exemption granted by the Minister of Economic Development, Innovation and Export Trade;

— or is carried out in the course of an exchange transaction covered by section 56 of the Cooperative Investment Plan Act.[10]

The amount of this tax will be equal to 50% of the total of the amounts each of which represents the amount obtained by applying, to the amount paid for the redemption of a security issued at least five years previously, the quotient obtained by dividing the number by which 1 826 exceeds the number of days included in the period beginning the day the security was issued and ending on the day it is redeemed by 1 826.

This special tax must be paid no later than March 31, 2010.

10 In general, the transaction covered in this section is a conversion of securities, a merger or reorganization of the social capital following which a security issued under the rules of the former CIP is exchanged for a security with the same characteristics. In this case, the security received in exchange is deemed to be the same security as the one exchanged and to be the continuation of it.

- **Special tax applicable to a holder of securities**

A special tax will be payable, for a given taxation year, where a security issued under the rules of the former CIP is, during 2009 and after the date of publication of this information bulletin, redeemed by a cooperative before the expiration of a period of five years starting on the date it was issued, unless the redemption of the security is carried out in accordance with the redemption requirements of the former CIP or is part of a process of block redemption of certain securities issued by the cooperative.

For example, in accordance with the redemption requirements of the former CIP, no tax is payable regarding the redemption of a security issued by a cooperative less than five years previously if the security is redeemed because of the death of its holder or the fact that he reached age 65 (or 60 if he is retired) or if it is part of the process of liquidation of the cooperative and the latter was exempted, by the Minister of Economic Development, Innovation and Export Trade, from the requirement to satisfy the condition relating to the increase in the reserve.

This special tax will be payable by the person who held the security immediately prior to its redemption by the cooperative. This may be the individual who, in fact, acquired the security from the cooperative, a person to whom the security was passed on by reason of death or a trust governed by a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF).

Where the holder of the security immediately prior to its redemption is a partnership, the members of the partnership at the end of its fiscal period during which the redemption is carried out will ultimately be required to pay the special tax determined for the taxation year in which such period ends, in proportion to their share of the income or loss of the partnership for the period.

Given that, as at January 1, 2010, all the outstanding securities of the former CIP will have been issued for more than five years, this special tax should only be payable for 2009, except for members of partnerships whose fiscal period begins in 2009 and ends in 2010. In the latter case, the special tax will be payable for their 2010 taxation year.

- **Determination of the special tax**

The amount of the special tax will be equal to the amount determined by the formula:

$$\left[\frac{1\,826 - \begin{array}{l}\text{number of days included in the period}\\ \text{starting the day the security was issued}\\ \text{and ending the day it is redeemed}\end{array}}{1\,826}\right] \times \begin{array}{l}\text{the lesser of 25\% of the cost of the security}[11]\\ \text{at the time it was issued and the amount}\\ \text{paid by the cooperative to redeem it}\end{array}$$

For greater clarity, where the security is redeemed from a partnership, the cost to be taken into consideration is equal to the proportion of the cost of the security for the partnership represented by all the participations of the eligible members in the income or loss of the partnership for the fiscal period during which it acquired the security. To that end, an eligible member's participation in the income or loss of the partnership corresponds to the proportion obtained by dividing such member's share of the partnership's income or loss for the fiscal period in question by the income or loss of the partnership for such fiscal period.

For the purposes of this rule, an eligible member of a partnership means an individual who was a member of the partnership at the end of its fiscal period during which it acquired the security and whose activities consisted chiefly in carrying on a farming business or who carried out his main activity within the partnership.

- **Payment of the special tax**

Cooperatives will be required to withhold the special tax on the amount payable at the time a security is redeemed. They must remit the amounts thus withheld on behalf of persons subject to the special tax to Revenu Québec within 30 days following the redemption date.

In addition, cooperatives will have to pay Revenu Québec, on behalf of the person subject to the special tax, any portion of the special tax payable by such person that was not withheld at source at the time the security was redeemed. However, they will be able to recover the amount of tax they will have thus paid from such person.

11 The cost of the security must be determined without taking into account borrowing expenses and expenses inherent in the acquisition.

6.2 Increased possibility for some forms of solidarity cooperatives to make use of the new CIP

Solidarity cooperatives are a relatively new phenomenon in Québec. They differ from other cooperatives by the diversity of their members and their openness to partnership. These cooperatives include at least two member categories among those of user members,[12] worker members[13] and support members.[14]

Currently, the new CIP recognizes, among the categories of cooperatives for which the plan is intended, two forms of solidarity cooperative.

They are solidarity cooperatives that would be work cooperatives were it not for their support members, and solidarity cooperatives that would be producers cooperatives were it not for their support members and if at least 90% of the goods or services they supply[15] are supplied to persons or to partnerships that acquire them for the purpose of earning a business income.

A cooperative that belongs to either of these two forms of solidarity cooperative and satisfies the other applicable criteria for determining its eligibility for the new CIP, like the criterion concerning the territoriality of its activities and the one concerning its capitalization rate, may be authorized, through the issue of an eligibility certificate, to make use of the CIP to raise capital.

Changes will be made to the eligibility criteria for the new CIP to recognize, for the purposes of this plan, a new form of solidarity cooperative including worker members and producer members and to take better account of the specific features of solidarity cooperatives that would be work cooperatives were it not for their support members.

❑ Recognition of solidarity cooperatives including worker members and producer members

The constant development of solidarity cooperatives, since this form of organization was created in 1997, has given rise to various membership models within them.

These include the model in which workers unite with producers to form a solidarity cooperative, with or without support members, within which they combine their efforts to achieve a common goal.

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12 I.e. the persons or partnerships that use the services offered by the cooperative.

13 I.e. the natural persons working within the cooperative.

14 I.e. any person or partnership that has an economic, social or cultural interest in achieving the purpose of the cooperative.

15 Including those supplied either through a partnership or a controlled subsidiary.

This model of solidarity cooperatives is not incompatible with the new CIP that already recognizes, in an isolated way, solidarity cooperatives consisting of worker members and support members and, under certain conditions, those consisting of producer-type user members and support members.

In this context, the eligibility criteria for the new CIP will be changed to add, to the list of categories of cooperatives recognized for the purposes of this plan, solidarity cooperatives, with or without support members, that include worker members and user members, provided, on the one hand, that each user member of the cooperative is a producer, as this expression is understood in the Cooperatives Act,[16] and, on the other, that at least 90% of the goods or services supplied to users by the cooperative[17] are supplied to persons or partnerships that acquire them for the purpose of earning a business income.

For greater clarity, cooperatives that belong to this new category of recognized cooperatives will, in addition to the other eligibility criteria otherwise applicable, have to satisfy the criterion relating to the capitalization rate.

This change will apply regarding an application for authorization to issue securities eligible for the new CIP filed with the Minister of Economic Development, Innovation and Export Trade after the date of publication of this information bulletin.

❑ Withdrawal of the criterion relating to the capitalization rate for solidarity cooperatives likened to work cooperatives

To be eligible for the new CIP for a given year, a cooperative must have a capitalization rate below 60% at the end of the last fiscal period ending in the calendar year preceding the given year, unless it belongs to the category of work cooperatives or that of shareholding workers cooperatives or was exempted, by the Minister of Economic Development, Innovation and Export Trade, from the requirement to satisfy this criterion because of an expansion or development project.

The exemption granted to work cooperatives is based essentially on the fact that many of them have seasonal activities, so much so that the capitalization rate shown in their annual financial statements is not always a reliable indicator of their need for capital.

Solidarity cooperatives that, were it not for their support members, would be work cooperatives do not enjoy the same exemption as they do, although they closely resemble the latter, both in their purpose and in the nature of their activities.

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16 As understood by this statute, a producer is a person or partnership that, in the course of exercising its profession or carrying on a business, provides services or produces goods in order to earn the means for its existence or its main income from a business or profession.

17 *Supra*, note 15.

Accordingly, amendments will be made to the Cooperative Investment Plan Act so that solidarity cooperatives that, were it not for their support members, would be work cooperatives are, like the latter, exempted from the requirement to satisfy the criterion relating to the capitalization rate.

This amendment will apply as of 2009.

6.3 Changes to the integrity rules of the new CIP concerning early redemptions of securities and the automatic revocation of eligibility certificates

As a tool designed to foster the capitalization of cooperatives that genuinely need it and have a substantial presence in Québec, the new CIP ensures a degree of permanence of the capital raised under this plan by stipulating that the securities issued to constitute such capital are generally not redeemable or repayable until after the expiration of five years beginning the date they were issued.

It also stipulates that cooperatives can make use of this plan only if they are authorized to do so by an eligibility certificate issued by the Minister of Economic Development, Innovation and Export Trade.

To ensure compliance with these rules, integrity measures have been implemented. These measures consist, for redemptions or repayments of securities within five years of the date they were issued, of a penalty or a special tax, depending on the circumstances. For eligibility certificates, they consist of revocation rules under which a certificate can be revoked either automatically or by decision of the Minister of Economic Development, Innovation and Export Trade.

Changes will be made to these integrity measures so that, on the one hand, redemptions or repayments of securities within five years of the date they were issued are subject to only one form of sanctions, and, on the other, eligibility certificates issued to cooperatives that cease to exist further to a merger are automatically revoked.

❑ Reorganization of the regime of sanctions applicable following early redemption or repayment of a security

According to the current rules, where a security issued under the new CIP is, during a given year and before the expiration of five years beginning on the date it was issued, the object of an eligible repayment or redemption, a special tax must be paid for the year. This special tax is calculated as a percentage attributable to the number of days during the five years that the security was not held.

To that end, redemption or repayment of a security is considered eligible when it occurs because of the death of the holder of the security or because of his resignation or exclusion as a member of the issuing cooperative or, if he is an employee of the cooperative, his termination of employment or his disability, provided the characteristics of the security stipulate the possibility of such redemption or repayment.

This special tax is payable, for a given year, by the person who held the security immediately prior to its redemption or repayment[18] or, if the security was held by a partnership, by its members at the end of its fiscal period ended in the year.

The cooperative that carried out the redemption or repayment must withhold the special tax on the amount payable at that time and remit the amount thus withheld on behalf of the person subject to the special tax to Revenu Québec within 30 days following the date of redemption or repayment. In addition, it must pay Revenu Québec, on behalf of the same person, any portion of the tax payable by it that was not withheld at source at the time of redemption or repayment.[19]

If a cooperative redeems or repays a security within five years of issuing it and such redemption or repayment is ineligible, the cooperative incurs a penalty equal to 30% of the amount of the security thus redeemed or repaid.

However, this penalty is eased in a context of liquidation or dissolution by being calculated on the basis of the number of days included in the five years that the security was not held.

In addition, it is inapplicable where the redemption or repayment of the security happens as part of a recognized exchange transaction.[20]

Regarding securities issued in the initial years of application of the new CIP, only the 30% penalty sanctioned an early redemption or repayment. Subsequently, regarding securities issued after March 23, 2006, the penalty was replaced, for certain types of early redemption or repayment, with a special tax designed to recover the tax benefit for the period the securities effectively were not held.

While each of these sanctions has a similar objective, they are based on different operating details. Whereas the special tax becomes payable on a specified date, the time of imposition of the penalty remains unknown. This peculiarity relating to the penalty forces cooperatives to manage their affairs by taking the resulting debt into account, without knowing when it will be payable, which can give rise to difficulties in the sound administration of their business.

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18 This may be the individual who, in fact, acquired the security from the cooperative, a person to whom the security was passed on by reason of death or a trust governed by a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF).

19 However, the cooperative can recover the amount of tax it thus paid from such person.

20 Such a transaction consisting of a conversion of securities, a merger or reorganization of the social capital following which a security issued under the rules of the new CIP is exchanged for a security with the same characteristics. In this case, the security received in exchange is deemed to be the same security as the one exchanged and to be the continuation of it.

Accordingly, changes will be made to make the sanctions for early redemption or repayment more uniform and, thus easier to manage.

More specifically, a new regime of sanctions, consisting only of special taxes – one of which will target cooperatives and the other holders of securities –, will replace, regarding early redemptions or repayments made after the date of publication of this information bulletin, the 30% penalty a cooperative may incur and the special tax applicable to a holder of securities.

■ Special tax applicable to a cooperative

A cooperative will have to pay a special tax, for a given year, where it carries out, during the year and after the date of publication of this information bulletin, a block repayment or redemption of securities issued less than five years previously under the rules of the new CIP, unless such redemption or repayment is carried out as part of an exchange transaction covered by section 6.2 of the Cooperative Investment Plan Act.[21]

The amount of this tax will be equal to 30% of the total of the amounts each of which represents the amount obtained by applying, to the amount paid for the redemption or repayment of a security issued less than five years previously, the quotient obtained by dividing the number by which 1 826 exceeds the number of days included in the period beginning the day the security was issued and ending on the day it is redeemed or repaid by 1 826.

This special tax must be paid no later than March 31 of the year following the year for which it is payable.

■ Special tax applicable to a holder of securities

A special tax will be payable, for a given taxation year, where a security issued under the rules of the new CIP is, during the year and after the date of publication of this information bulletin, redeemed or repaid by a cooperative before the expiration of a period of five years starting on the date it was issued, unless the redemption or repayment of the security is part of a process of block repayment or redemption of certain securities issued by the cooperative.

This special tax will be payable by the person who held the security immediately prior to its redemption or repayment by the cooperative. This may be the individual who, in fact, acquired the security from the cooperative, a person to whom the security was passed on by reason of death or a trust governed by a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF).

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21 *Supra*, note 20.

Where the holder of the security immediately prior to its redemption or repayment is a partnership, the members of the partnership at the end of its fiscal period during which the redemption or repayment is carried out will ultimately be required to pay the special tax determined for the taxation year in which such period ends, in proportion to their share of the income or loss of the partnership for the period.

- **Determination of the special tax**

The amount of the special tax will be equal to the amount determined by the formula:

$$\left[\frac{1\,826 - \text{number of days included in the period starting the day the security was issued and ending the day it is redeemed or repaid}}{1\,826}\right] \times \text{the lesser of the amount obtained by multiplying, by the stipulated rate, the cost of the security[22] at the time it was issued and the amount paid by the cooperative to redeem or repay it}$$

In this formula, the stipulated rate means a rate of 25% if the redemption or repayment of the security constitutes a redemption or repayment covered by section 7 of the Cooperative Investment Plan Act[23] and, in other cases, 30%.

For greater clarity, where the security is redeemed from or repaid to a partnership, the cost to be taken into consideration is equal to the proportion of the cost of the security for the partnership represented by all the participations of the eligible members in the income or loss of the partnership for the fiscal period during which it acquired the security. To that end, an eligible member's participation in the income or loss of the partnership corresponds to the proportion obtained by dividing such member's share of the partnership's income or loss for the fiscal period in question by the income or loss of the partnership for such fiscal period.

For the purposes of this rule, an eligible member of a partnership means an individual who was a member of the partnership at the end of its fiscal period during which it acquired the security and who, at that time, exercised agricultural producer activities through the partnership.

22 The cost of the security must be determined without taking into account borrowing expenses and expenses inherent in the acquisition.

23 I.e., in general, provided the characteristics of the security stipulate these possibilities, a redemption or repayment made by a cooperative because of the death of the holder of the security or because of is resignation or exclusion as a member of the cooperative, or if he is an employee of the cooperative, his termination of employment or his disability.

- **Payment of the special tax**

Cooperatives will be required to withhold the special tax on the amount payable at the time a security is redeemed or repaid. They must remit the amounts thus withheld on behalf of persons subject to the special tax to Revenu Québec within 30 days following the redemption or repayment date.

In addition, cooperatives will have to pay Revenu Québec, on behalf of the person subject to the special tax, any portion of the special tax payable by such person that was not withheld at source at the time the security was redeemed or repaid. However, they will be able to recover the amount of tax they will have thus paid from such person.

❑ Automatic revocation of the eligibility certificate further to a merger

In some cases, the Minister of Economic Development, Innovation and Export Trade can revoke the eligibility certificate of a cooperative, where justified by information or documents brought to his attention. Cases that may lead to the revocation of a certificate include the case where a cooperative ceases to satisfy the criteria justifying the issue of its certificate and the one where it obtained the certificate by knowingly providing false information.

Before revoking a cooperative's eligibility certificate, the Minister must so inform the cooperative and give it an opportunity to be heard.

However, some situations in which a cooperative ceases to exist call for automatic revocation of the eligibility certificate.

Such is the case for cooperatives dissolved under the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons and for cooperatives wound up on accordance with their governing statute.[24]

Despite the fact that, in many cases, cooperatives that are part of a merger cease, in the wake of this operation, to exist, their eligibility certificate is not automatically revoked.

Under the circumstances, the rules of the new CIP will be changed to stipulate that the eligibility certificate of a cooperative that is party to a merger will be revoked automatically on the effective date of the merger, in the following cases:

— the cooperative is party of an ordinary merger carried out in accordance with the Cooperatives Act or the Canada Cooperatives Act;

— the cooperative is party of a merger by absorption carried out in accordance with the Cooperatives Act and is an absorbed cooperative;

24 I.e., for cooperatives under the Québec system, the Cooperatives Act and, for cooperatives under the federal system, the Canada Cooperatives Act.

— the cooperative is party to a merger with a legal person governed by Part III of the Companies Act and the merger is carried out in accordance with the Cooperatives Act;

— the cooperative is party to a simplified vertical merger carried out in accordance with the Canada Cooperatives Act and is a wholly-owned subsidiary of the parent cooperative that is also party to the merger;

— the cooperative is party to a simplified horizontal merger carried out in accordance with the Canada Cooperatives Act and is a subsidiary whose shares have been cancelled.

The changes made in this regard will apply to a merger taking effect after October 31, 2008.

7. ADJUSTMENT TO THE INVESTMENT REQUIREMENT OF THE FONDS DE SOLIDARITÉ FTQ AND NEW CRITERION FOR THE REDEMPTION OF ITS SHARES

Since the creation of the Fonds de solidarité FTQ (the Fonds), the government has supported its mission by allowing it to collect capital enjoying a tax benefit consisting of a non refundable tax credit to individuals who become its shareholders.

Since this Fonds's financing is made easier by granting a tax benefit, an investment requirement was included in its statute of incorporation to ensure, in particular, that the funds collected are used as a financing tool contributing to the development of Québec entities.

Accordingly, for each fiscal year, the eligible investments of the Fonds – that include no security or hypothec – must represent, on average, at least 60% of its average net assets for the preceding fiscal year.[25]

In addition to fostering job creation and investment in Québec companies, an objective of the Fonds is to raise awareness and encourage workers to save for their retirement by purchasing shares it issues.

To ensure the consistency of established rules, changes will be made to the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.), hereunder called "Act to establish the Fonds".

25 If this investment requirement is not satisfied for a given fiscal year, the Fonds is systematically limited in its capacity to issue shares during the following fiscal year.

7.1 Adjustment to the investment requirement

Over the years, the Fonds investment requirement, hereunder called the "60% requirement", has been changed to adapt it to the capital requirements of Québec companies and to enable the Fonds to play a larger role in the economy.

Just recently, it was announced that this requirement would be changed to recognize the participation of the Fonds in a $500-million emergency fund for the recovery of businesses that would consist of a limited partnership whose capital would be provided equally by the Société générale de financement (SGF) and the Fonds.[26]

Briefly, it was announced that the investments made by the Fonds in this limited partnership – as well as the agreed investments for which funds were committed but not yet disbursed at the end of a given fiscal year – would be considered eligible investments for the purposes of calculating the 60% requirement.

On May 29, 2009, the Fonds and the SGF created the emergency fund for the recovery of businesses, called the Fonds Élan d'entreprises, société en commandite (s.e.c.). The parties set out a business model enabling them to make decisions in common relating to an investment, and separately for those relating to disinvestment. To do so, each party created a limited partnership[27] by means of which it intends to hold 50% of the investments in businesses initiated by the Fonds Élan d'entreprises, s.e.c.

To reflect the business model selected by the Fonds and the SGF for the creation of the emergency fund for the recovery of businesses, the 60% requirement will be adjusted so that the investments made by the Fonds in the Fonds Élan d'entreprises, s.e.c. – including those agreed and for which funds have been committed but not yet disbursed at the end of a given fiscal year[28] – as well as the investments in the Fonds Envol, s.e.c. it acquires from the Fonds Élan d'entreprises, s.e.c. be considered eligible investments, up to an amount of $250 million.

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26 MINISTÈRE DES FINANCES DU QUÉBEC, *2009-2010 Budget – Additional Information on the Budgetary Measures*, March 19, 2009, Section A, p. A.68.

27 The one created by the Fonds is called the Fonds Envol, société en commandite.

28 For greater clarity, these investments will not be included in the calculation of the 12% authorized limit applicable to non-disbursed investments.

7.2 New criterion for the redemption of shares issued

To ensure a degree of permanence of the capital thus raised, the Act to establish the Fonds stipulates a limited number of cases in which shares issued to constitute this capital can be redeemed.

Given that, in essence, any acquisition of shares of the Fonds must be considered an investment for retirement, the primary criterion of redemption is based on events inherent in retirement. To that effect, it is stipulated that a share is redeemable at the request of the person who acquired it[29] from the fund at least 730 days previously if, after having reached age 45, he elected to take early retirement or retirement or if he has reached age 65.

The four other redemption criteria cover exceptional cases, such as the disability or death of the person who acquired the shares.

With regard to death, it is stipulated that any person on whom a share in the Fonds has devolved by succession can request its redemption.

As this criterion is worded, it allows a person who is the spouse of a shareholder of the Fonds to obtain, following the death of the shareholder, redemption of the shares devolved to such person by succession.

However, it does not allow a person to obtain, because of the death of his or her spouse, redemption of the shares the latter transferred into a registered retirement savings plan (RRSP) of which he or she is the annuitant. To obtain redemption of such shares, such person must satisfy the criterion relating to events inherent in retirement, or the criterion relating to disability.

Accordingly, in the interests of fairness and uniform treatment, the Act to establish the Fonds will be amended to stipulate that a share[30] may be redeemed at the request of a person who is the annuitant of an RRSP in which the share was transferred by an individual who was his or her spouse at the time of the transfer, if such individual is deceased.

This amendment will take effect as of the day following the day of publication of this information bulletin.

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29 For the purposes of this redemption criterion, a person is deemed to have acquired any share that his or her spouse transferred into a registered retirement savings plan of which he or she is the annuitant.

30 Including a fractional share.

8. HARMONIZATION WITH CERTAIN MEASURES OF THE FEDERAL BUDGET OF JANUARY 27, 2009

8.1 Compulsory electronic transmission of returns and penalties

In the March 19, 2009 Budget Speech,[31] it was announced that the ministère des Finances would make known at a later date whether Québec's tax legislation would be harmonized with the amendments to the federal tax legislation announced in the federal Budget Speech of January 27, 2009,[32] concerning the obligation of certain corporations to file their tax return electronically, the obligation under certain circumstances to file an information return electronically as well as the penalties for failure to file a tax return electronically and failure to file an information return electronically or file it on time (BR 19 to BR 22).[33]

In this regard, the analysis to determine the adaptations needed to carry out such harmonization has been completed. More specifically, Québec's tax legislation will be harmonized with the federal tax legislation concerning a corporation's obligation to file its tax return electronically (BR 19). However, this amendment will apply for a taxation year ending after May 31, 2010.

Furthermore, Québec's tax legislation will be amended so that a corporation that does not file a tax return electronically as mentioned above will be liable to pay a penalty corresponding to:

— $250, if the taxation year ends after May 31, 2011;

— $500, if the taxation year ends after May 31, 2012;

— $1 000, if the taxation year ends after May 31, 2013 (BR 20).

Moreover, Québec's tax legislation will be harmonized with the federal tax legislation so that persons who file more than 50 occurrences of a given type of information return will be required to file these returns electronically. Accordingly, Québec's tax legislation will be harmonized with the federal tax legislation concerning the penalty intended to sanction a person's failure to file an information return electronically or to file it on time (BR 21 and BR 22). However, these changes will apply for information returns to be filed as of January 1, 2011.

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31 MINISTÈRE DES FINANCES DU QUÉBEC, see above, note 26, p. A. 79.

32 DEPARTMENT OF FINANCE CANADA, *Canada's Economic Action Plan – Budget 2009*, January 27, 2009, Annex 5, Tax Measures: Supplementary Information and Notices of Ways and Means Motions, p. 341-342.

33 References in parentheses correspond to the number of the budget resolution in the Notice of Ways and Means Motions to amend the Income tax act tabled January 27, 2009.

8.2 Instalment payments of Canadian-controlled private corporations

A Canadian-controlled private corporation (CCPC) that satisfies certain conditions stipulated in the legislation, including having taxable income of less than $400 000, can pay corporate income tax by quarterly rather than monthly instalment payments.

In the March 19, 2009 Budget Speech, it was announced that Québec's tax legislation would be harmonized with the federal tax legislation in relation to the increase in the small business limit, from $400 000 to $500 000. [34]

At the same time, it was also announced that Québec's tax legislation would not be harmonized with the federal tax legislation regarding the increase in the amount of taxable income below which a CCPC can make quarterly rather than monthly instalment payments.[35]

However, following further examination of this question, it appears desirable to harmonize Québec's tax legislation with the federal tax legislation.

Consequently, Québec's tax legislation will be amended to incorporate changes proposed by budget resolutions 16 and 17 [36] in relation to the increase, from $400 000 to $500 000, in the amount of taxable income below which a CCPC can make quarterly rather than monthly instalment payments.

Like the change raising the small business limit from $400 000 to $500 000, this change will apply as of the day following that of the 2009-2010 Budget Speech, i.e. March 20, 2009. However, where a corporation's taxation year includes that day, the increase will apply in proportion to the number of days of such taxation year that follow that day.

34 MINISTÈRE DES FINANCES DU QUÉBEC, see above, note 26, p. A.77.

35 Id., p. A.78.

36 MINISTÈRE DES FINANCES DU QUÉBEC, see above, note 32, p. 340.